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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re application of : **ATTN: PETITIONS OFFICE**

Takayuki WATANABE et al. : Docket No. 2000-0044A

Serial No. 09/492,137 : Confirmation No. 9482

Filed January 27, 2000

EDIBLE POWDER MATERIAL HAVING EXCELLENT SHELF STABILITY

THE CROWN OF THE UNITED STATES
THE STATE OF NEW YORK
FEE: ONE DOLLAR
EXCELSIOR.

REQUEST FOR DECISION ON PETITION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Siri

On November 27, 2002 Applicants' attorney filed a petition, a copy of which is enclosed, along with a copy of the postcard receipt which includes the petition. Applicants' attorney has not yet received a decision on the petition. Such decision is hereby requested.

Respectfully submitted,

Takayuki WATANABE et al.

Bv

Michael R. Davis
Registration No. 25,134
Attorney for Applicants

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September 30, 2003



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COPY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : **ATTN: PETITIONS OFFICE**
Takayuki WATANABE et al. : Docket No. 00202/K-5 (Hase) /YE
Serial No. 09/492,137 : [Group Art Unit 1761]
Filed January 27, 2000 : [Examiner H. Mai]

**EDIBLE POWDER MATERIAL
HAVING EXCELLENT SHELF STABILITY : Confirmation No. 9482**

PETITION

Assistant Commissioner for Patents,
Washington, D.C.

THE COMMISSIONER IS AUTHORIZED
TO CHARGE ANY DEFICIENCY IN THE
FEE FOR THIS PAPER TO DEPOSIT
ACCOUNT NO. 23-0975.

Sir:

On even date herewith, Applicants are filing a Continued Prosecution Application (CPA) in connection with the above-identified application, along with a Preliminary Amendment and a Petition for a four month Extension of Time and the extension fee of \$1,440.00 (for filing the Appeal Brief). Applicants hereby petition for a partial refund of the extension fee in the amount of \$1,330.00, or in the alternative, such portion of the \$1,330.00 which is considered to be appropriate under the circumstances set forth below.

1. A final rejection in the application was mailed November 29, 2001.
2. An Amendment, a Rule 132 Declaration and Petition for two month Extension were filed April 29, 2002.
3. A Notice of Appeal and Petition for a third month Extension were filed May 29, 2002.
4. The first Advisory Action was mailed June 18, 2002.
5. A response to the first Advisory Action was filed July 25, 2002.
6. The second Advisory Action was mailed October 31, 2002.
7. There were numerous telephone discussions between Applicants' attorney and the Examiner, and between Applicants' attorney and the Examiner's supervisor, as set forth below.

On May 24, 2002 Applicants' attorney left a voicemail message for the Examiner indicating that a reply to the Amendment filed April 29, 2002 had not been received. A similar voicemail message was left by Applicants' attorney with the Examiner's supervisor Mr. Cano on May 28, 2002. On May 29, 2002 the Examiner informed Applicants' attorney that she was then acting on the case.

On June 12, 2002 Applicants' attorney left a voicemail message with the Examiner indicating that a reply to the Amendment filed April 29, 2002 still had not been received. The Examiner informed Applicants' attorney, on the same date, that the case had been turned in to her SPE for approval of an Advisory Action.

As indicated above, the first Advisory Action was mailed June 18, 2002, and Applicants filed a Response to Advisory Action on July 25, 2002.

On August 21, 2002, Applicants' attorney left a voicemail message for the Examiner indicating that a reply to the Response to Advisory Action had not been received. On the same day, the Examiner informed Applicants' attorney that she would be acting on the case in "a couple of days". During this conversation, the Examiner seemed to be unaware that a Rule 132 Declaration was filed with the Amendment on April 29, 2002. The Examiner indicated that she could not find the Declaration, and so a copy of it was faxed to her on August 21, 2002, together with a copy of the postcard receipt showing that the Declaration was received by the PTO on April 29, 2002 along with the other papers filed on that date. Although the fax transmission report indicated that all of the pages of the fax went through to the Examiner, she indicated during a subsequent telephone discussion on August 21, 2002 that she did not receive all of the pages, and so the Declaration was refaxed to her on August 27, 2002. Applicants' attorney then left a voice mail message for the Examiner on September 27, 2002 asking her about the status of the application. Since her voice mail indicated that she was away from the PTO until October 17, 2002, Applicants' attorney immediately contacted Mr. Cano, and advised him of the situation. Since Applicants' attorney still did not receive any Advisory Action, another voicemail message to this effect was left for Mr. Cano on October 25, 2002. The second Advisory Action was then received on November 5, 2002.

Applicants respectfully submit that the second Advisory Action should have been received no later than August 29, 2002, which would have been the date that Applicants could have filed the CPA

with a petition for a one month extension. Accordingly, Applicants petition for a refund of the extension fee for the second, third and fourth months extension, in the amount of \$1,330.00, or alternatively, if this amount is denied, then for a refund of such portion of this amount as considered to be appropriate under the circumstances.

Any such refund can be credited to Applicants' attorney's PTO Deposit Account (23-0975).

Although it is the opinion of Applicants' attorney that a petition fee should not be required for the instant Petition, in the event such fee is required it may be charged to Applicants' attorney's PTO Deposit Account (23-0975). For this purpose, a copy of this Petition is submitted herewith.

Respectfully submitted,

Takayuki WATANABE et al.

By:



Michael R. Davis

Registration No. 25,134

Attorney for Applicants

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November 27, 2002

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ATTY DOCKET #: 00202/K-5 (Hase) /YE
Confirmation No. 9482

Due Date: None

OUR REF: 2000-0044A/MRD/00202
Applicant: Takayuki WATANABE et al.
Serial No.: 09/492,137 **Filing Date:** January 27, 2000
Title: EDIBLE POWDER MATERIAL HAVING EXCELLENT SHELF STABILITY

Receipt of the following papers is acknowledged:

Petition (in duplicate)



Date: November 27, 2002

Attorney: MRD/ptb

[Check No. N/A]